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RELIGION AND LAW IN GERMANY

GERHARD ROBBERS



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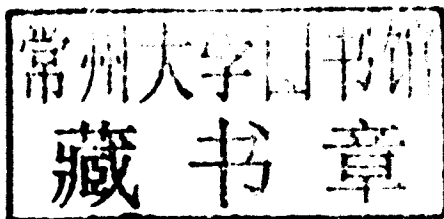
Gerhard Robbers

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Religion and Law in Germany

Germany

by
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A selection of the author's publications includes: *Encyclopedia of World Constitutions* (ed.), 3 volumes, New York: Facts on File 2006; *State and Church in the European Union* (ed.), 2nd edition 2005 (also in German, French, Greek, Polish, and Russian), 1st edition 1997 (also in German, French, Italian, Spanish, Hungarian, and Czech); *An Introduction to German Law*, 4th edition 2006 (also in German: 4th edition 2006). Further publications cover public law, civil ecclesiastical law, legal philosophy, constitutional history and European Union law.

List of Abbreviations

Abbreviation	German	English
§	Paragraph	German equivalent of 'section'
AABF	Föderation der europäischen Alewiten	Federation of European Alevites
AAS	Acta Apostolicae Sedis	Acts of the Holy See
ABl.	Amtsblatt	Official Journal
ABl.EKD	Amtsblatt der Evangelischen Kirche in Deutschland	Official Journal of the Evangelical Church in Germany
ACK	Arbeitsgemeinschaft Christlicher Kirchen	Alliance of Christian Churches
AGB	Arbeitsgemeinschaft der Brüdergemeinden	Working Union of Brethren
Amtsbl.	Amtsblatt	Official Journal
ArbG	Arbeitsgericht	Labour Court
ARD	Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland	Consortium of public-law broadcasting institutions of the Federal Republic of Germany
ATIB	Türkisch-Islamische Union	Turkish-Islamic Union
BAG	Bundesarbeitsgericht	Federal Labour Court
BAGE	Entscheidungen des Bundesarbeitsgerichts	Decisions of the Federal Labour Court
BAMF	Bundesamt für Migration und Flüchtlinge	Federal Agency for Migration and Refugees
BaWü	Baden-Württemberg	Baden-Wuerttemberg

List of Abbreviations

BayObLG	Bayerisches Oberstes Landesgericht	Bavarian Highest Regional Court
BayRS	Bayrische Rechtssammlung	Collection of Bavarian Laws
BB	Brandenburg	Brandenburg
Bbg	Brandenburg	Brandenburg
BEFG	Bund Evangelisch- Freikirchlicher Gemeinden in Deutschland	Union of Evangelical Free Churches in Germany
BGBI	Bundesgesetzblatt	Federal Law Gazette
BGH	Bundesgerichtshof	Federal Court of Justice
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen	Decisions relating to private law of the Federal Court of Justice
BRE	Bremen	Bremen
Brem	Bremen	Bremen
BT-Drs.	Bundestag-Drucksache	Official Records of the German Parliament (Bundestag)
BVerfG	Bundesverfassungsgericht	Federal Constitutional Court
BVerfG (K)	BVerfG Kammer	Chamber of the Federal Constitutional Court
BVerfGE	Entscheidungen des Bundesverfassungsgerichts	Decisions of the Federal Constitutional Court
BVerfGK	Kammerentscheidung des BVerfG	Decision of a Chamber of the Federal Constitutional Court
BVerwG	Bundesverwaltungsgericht	Federal Administrative Court
BVerwGE	Entscheidungen des Bundesverwaltungsgerichts	Decisions of the Federal Administrative Court
BW	Baden-Württemberg	Baden-Wuerttemberg
BY	Bayern	Bavaria
CDU	Christlich Demokratische Union Deutschlands	Christian Democratic Union of Germany
CSU	Christlich-Soziale Union in Bayern e. V.	Christian Social Union in Bavaria
dB(A)	Schalldruckpegel A-Bewertung	A-weighted decibels

List of Abbreviations

DDR	Deutsche Demokratische Republik	German Democratic Republic
DITIB	Türkisch-Islamische Union der Anstalt für Religion	Turkish-Islamic Union of the Institute for Religion
ECHR	Europäische Menschenrechtskonvention	European Convention Human Rights
ECJ	Europäischer Gerichtshof (EuGH)	European Court of Justice
ECR	Sammlung der Rechtsprechung des Gerichtshofes und des Gerichts Erster Instanz	Records of the European Court of Justice
EED	Evangelischer Entwicklungsdienst	German Protestant Church Development Service
EKD	Evangelische Kirche in Deutschland	Evangelical Church in Germany
GBL	Gesetzblatt	Law Gazette
GMBL	Gemeinsames Ministerialblatt	Common Ministerial Gazette
GVBl.	Gesetz- und Verordnungsblatt	Law and Ordinance Gazette
GVOBl.	Gesetz- und Verordnungsblatt	Law and Ordinance Gazette
HB	Bremen	Bremen
HE	Hessen	Hesse
HessStGH	Hessischer Staatsgerichtshof	Constitutional Court of Hesse
HfJS	Hochschule für Jüdische Studien	College of Jewish Studies
HH	Hamburg	Hamburg
Hmb	Hamburg	Hamburg
IEVR	Institut für Europäisches Verfassungsrecht	Institute for European Constitutional Law
IGMG	Islamische Gemeinschaft Milli Görüs	Islamic Community Milli Görüs
KABl., Kirche	Kirchliches Amtsblatt Entscheidungen in Kirchensachen seit 1946	Official Ecclesiastical Journal Decisions in Church Matters (since 1946)
Kirchl. ABl.	Kirchliches Amtsblatt	Official Ecclesiastical Journal
KRM	Koordinierungsrat der Muslime in Deutschland	Coordination Council of the Muslims in Germany

List of Abbreviations

LER	Lebensgestaltung, Ethik, Religionskunde	Life Shaping, Ethics, Religious Knowledge
LSA	Land Sachsen-Anhalt	<i>Land</i> Saxony-Anhalt
MB	Muslimbruderschaft	Muslim Brotherhood
MCC	Basisgemeinde Hamburg – Die Kirche (nicht nur) für Lesben und Schwule	Basis Congregation Hamburg-The Church (not only) for Lesbians and Gays
MEFAG	Missionsgesellschaft zur Förderung und Erhaltung adventistischen Glaubensgutes	Missionary Society for the Advancement and Preservation of Adventist Belief
MV	Mecklenburg-Vorpommern	Mecklenburg-Western Pomerania
M-V	Mecklenburg-Vorpommern	Mecklenburg-Western Pommerania
NDS, Nds	Niedersachsen	Lower Saxony
NRW	Nordrhein-Westfalen	North Rhine-Westphalia
OLG	Oberlandesgericht	Higher Regional Court
OLGR	Oberlandesgerichtsreport	Reports of Higher Regional Courts
OVG	Oberverwaltungsgericht	Higher Administrative Court
PBC	Partei Bibeltreuer Christen	Party of Christians Loyal to the Bible
RGBl.	Reichsgesetzblatt	Reich Law Gazette
RLP	Rheinland-Pfalz	Rhineland-Palatinate
RIPf	Rheinland-Pfalz	Rhineland-Palatinate
RP	Rheinland-Pfalz	Rhineland-Palatinate
Schl.-H.	Schleswig-Holstein	Schleswig-Holstein
SED	Sozialistische Einheitspartei Deutschlands	Socialist Unity Party of Germany
SELK	Selbständige Evangelisch-Lutherische Kirche	Independent Evangelical Lutheran Church
SH	Schleswig-Holstein	Schleswig-Holstein
SL	Saarland	Saarland
SN	Sachsen	Saxony

List of Abbreviations

SPD	Sozialdemokratische Partei Deutschlands	Social Democratic Party of Germany
STA	Gemeinschaft der Siebenten-Tags-Adventisten	Community of Seventh Day Adventists
StGH	Staatsgerichtshof	Constitutional Court
TH	Thüringen	Thuringia
Verf.	Verfassung	Constitution
VerfGH	Verfassungsgerichtshof	Constitutional Court
VerfGHE BY	Entscheidungen des Verfassungsgerichtshofs Bayern	Decisions of the Constitutional Court of Bavaria
VG	Verwaltungsgericht	Administrative Court
VIKZ	Verband der Islamischen Kulturzentren e. V.	Association of Islamic Cultural Centres
VOBl	Verordnungsblatt	Ordinance Gazette
ZDF	Zweites Deutsches Fernsehen	German Television Channel II
ZMD	Zentralrat der Muslime in Deutschland	Central Council of Muslims in Germany

Preface

The law and religion are closely intertwined. The law provides structures and normative conditions in which religion exists. Religion, on the other hand, determines the law by values and convictions of the people. Religion and its counterpart, anti-religious ideas, are fundamentals on which the law grows.

Religion has always been of significant impact in the public sphere in Germany. The German law mirrors this public relevance of religion, and it provides specific structures for the manifestations of religion. Freedom of religion as well as institutional guarantees forms the basis on which religious life can develop.

For a long period, religion had seemed to be on the retreat, but recent years have shown a renaissance of religion also in Germany. Religious pluralism and diversity are growing. Religions that are relatively new in the country, especially Islam, have gained importance in a German culture, which still is coined by Christianity. Jewish life remains a specific factor of moral responsibility of the German people. Non-religious beliefs as well as still widespread disinterest in religion provide a further feature to which the law on religion has to respond.

This outline of the law on religion in Germany is based on the factual developments in religious demography that are challenging a system that has grown over centuries. The major features of this long grown system seem to be still valid in practice and able to accommodate new developments, not the least also by gradually changing where necessary. The description of this law emphasizes the long-standing traditions and basic principles of the German law on religion, but it also gives an account of its details and characteristic solutions. The federal structure of Germany demands to be careful about differences between its sixteen federal states that may seem to be of minor importance at first sight, but which can amount to basic divergences when seen together. The federal level, again, is of major impact on the overall picture and needs careful attention. Many details, however, have found very similar solutions throughout the various federal states and the federation itself; fundamental principles are the same. Where appropriate, a detailed description refers to one of the federal states or the federal level as an example and provides references for further material.

In describing the German law on religion, the basic structure developed by the editor has been followed. This will make it easier for the reader to compare the German system with others. It has to be kept in mind, however, that this approach does not always fit into the usual German legal doctrine and its structures. Yet, the advantages of this common structure seem to prevail over doctrinal purism. Some general information beyond the mere law on religion is also given in order to

Preface

support the understanding of this specific field of law when this depends on such background data.

I am greatly indebted to the editor of this collection, Professor Rik Torfs, and to those who have rendered most valuable help in finalizing this survey: Katharina Böhme, Christine Brentrup, Angelika Günzel, Bärbel Junk, Ingrid Kehrer, Linda Kern, Claudia Lehnen, Hanno Merten, Moritz Reger, Robert Schiller, Gerhild Scholzen-Wiedmann, Oliver Windgätter and Oliver Wolf.

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